

PAROLE BOARD[205]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 904A.4(2), 906.3, and 906.19, the Board of Parole hereby adopts amendments to Chapter 9, “Certificates of Employability,” and Chapter 11, “Parole Revocation,” Iowa Administrative Code.

The amendments to Chapter 9 update the rules establishing the criteria for the issuance of certificates of employability to incorporate current programs being offered by the Iowa Department of Corrections and Iowa Workforce Development and to make the issuing process more efficient. The amendments are the result of collaborative efforts between the Iowa Board of Parole, the Iowa Department of Corrections, and Iowa Workforce Development.

The amendments to Chapter 11 clarify when a parole revocation hearing may be conducted electronically and specify that videoconferencing may be the manner in which the electronic hearing is to proceed. The amendments also conform rule 205—11.12(908) to Iowa Code section 908.10A, which requires automatic revocation of parole when a parolee is convicted and sentenced to incarceration for an aggravated misdemeanor.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2590C** on June 22, 2016. A public hearing was held on July 12, 2016. No one attended the public hearing, and no comments were received orally or in writing. These amendments are identical to those published under Notice.

The Board adopted these amendments on July 28, 2016.

Waiver is available in specified situations as found in rule 205—11.11(908).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 904A.4(2), 906.3, and 906.19.

These amendments will become effective on December 19, 2016.

The following amendments are adopted.

ITEM 1. Amend rules 205—9.3(906) to 205—9.5(906) as follows:

205—9.3(906) Issuance of a certificate by the board of parole of employability.

~~9.3(1) The board of parole may issue a certificate of employability to an offender who has been committed to an institution under the jurisdiction of the department of corrections. Such certificate may be issued by the board at the time the offender is released from such institution under the board’s authority or at any time thereafter. The board shall only issue a certificate of employability to an offender who obtains a positive recommendation from the department of corrections or community-based corrections in the state of Iowa.~~

~~9.3(2) The board of parole shall not issue any certificate of employability pursuant to this chapter unless the board is satisfied that:~~

~~a. The person to whom it is to be granted is an eligible offender;~~

~~b. The relief to be granted by the certificate is consistent with the employability of the eligible offender; and~~

~~c. The relief to be granted by the certificate is consistent with the public interest.~~

~~9.3(3) Any certificate of employability issued by the board of parole to an eligible offender shall be deemed to be a temporary certificate until such time as the eligible offender is discharged from the board’s supervision. Such a certificate may be revoked by the board, by the board’s designee, or by an administrative parole judge for violation of the conditions of release or new arrest. Revocation shall be upon notice to the offender, who shall be accorded an opportunity to explain the violation prior to a decision thereon in accordance with subrule 9.3(5) below. After an eligible offender discharges all indictable criminal offenses imposed by the state of Iowa, the certificate of employability will only be revoked if it is determined that the certificate was obtained as the result of fraud or deceit or if the eligible offender is subsequently convicted in Iowa, or any other jurisdiction, of a crime that has a maximum~~

penalty of two or more years of incarceration, in which case the certificate of employability shall be automatically revoked.

~~9.3(4)~~ In the granting of a certificate of employability, the number of votes required to grant the certificate will be determined by the board of parole risk assessment score as set out in 205—subrules 8.15(2) to 8.15(4).

~~9.3(5)~~ A certificate of employability may be revoked by the decision of an administrative parole judge or the board's designated officer at a parole revocation hearing held pursuant to rule 205—11.7(908). A certificate of employability may also be revoked at any time by affirmative vote of three or more of the parole board members.

~~9.3(6)~~ The board may conduct an investigation of the applicant for the purpose of determining whether a certificate of employability shall be issued.

~~9.3(7)~~ Any applicant whose application for a certificate of employability has been denied shall have the right to an appeal to the board of parole if the applicant initiates an appeal within ten days of written receipt of initial decision. Any appeal must be on an official board of parole appeal form.

~~9.3(1)~~ The department of corrections shall issue a certificate of employability, at the time of release, to an eligible offender who:

a. Receives a parole, work release, or early discharge from the board of parole; and

b. Successfully completes one of the following:

(1) Department of corrections registered apprenticeship program; or

(2) National Career Readiness Certificate and the life skills program.

9.3(2) Reserved.

205—9.4(906) Effect of revocation; use of revoked certificate. Where a certificate of employability is deemed to be revoked, disabilities and forfeitures relieved by the certificate shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the board of parole.

205—9.5(906) Forms and filing.

~~9.5(1)~~ All applications, certificates and orders of revocation necessary for the purposes of this chapter shall be upon forms prescribed by the board of parole and in accordance with policies adopted by the board.

~~9.5(2)~~ The parole board issuing or revoking any certificate pursuant to this chapter shall immediately file a copy of the certificate, or of the order of revocation, with the department of corrections and with any affected licensing agency.

ITEM 2. Renumber rule **205—9.6(906)** as **205—9.4(906)**.

ITEM 3. Amend subrule 11.11(3) as follows:

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted electronically by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

ITEM 4. Amend rule 205—11.12(908) as follows:

205—11.12(908) Conviction of a felony or aggravated misdemeanor while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony or aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole and which if committed in Iowa would be a felony or aggravated misdemeanor, the parolee's parole shall be deemed revoked as of the date of the commission of the offense.

11.12(1) The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony or aggravated misdemeanor shall be served consecutively to the sentence for which the defendant was on parole, unless a concurrent term of imprisonment is ordered by the court.

11.12(2) The parole officer shall forward to the board of parole a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 or 908.10A and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony or aggravated misdemeanor offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

11.12(3) The parolee shall be notified in writing that the parole has been revoked on the basis of the new conviction, and a copy of the commitment order shall accompany the notification. The parolee's record shall be reviewed pursuant to the provisions of Iowa Code section 906.5, or as soon as practical after a final reversal of the new conviction.

11.12(4) An inmate may appeal the revocation of parole under this rule according to the procedure indicated in rule 205—11.8(908).

11.12(5) Neither the administrative parole judge nor the board shall retry the facts underlying any conviction.

[Filed 7/28/16, effective 12/19/16]

[Published 8/17/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/17/16.